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NASA Procedural Requirements

COMPLIANCE IS MANDATORY**NPR 2210.1C**Effective Date: August
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Request Notification of Change

(NASA Only)

Subject: Release of NASA Software

Responsible Office: Office of the Chief Technologist[| TOC](#) | [Preface](#) | [Chapter1](#) | [Chapter2](#) | [Chapter3](#) | [AppendixA](#) | [AppendixB](#)
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Chapter 3. Release Options and Restrictions

3.1 General Considerations

3.1.1 Generally, after consultation with the Center Patent or IP Counsel, software shall be categorized as Releasable Without Nondisclosure Obligations, Releasable With Nondisclosure Obligations, Releasable Only for U.S. Government Purposes, or Not Releasable as described in paragraph 2.4.4.

3.1.2 The Center SRA is authorized to release software with more restrictive conditions than recommended by Center Patent or IP Counsel and the CEA, provided that the SRA works with the Center Patent or IP Counsel to prepare the appropriate SUA. However, in no event shall the Center SRA release software with less restrictive conditions than recommended by Center Patent or IP Counsel in paragraphs 2.4.4.1 through 2.4.4.4, by the CEA in section 2.6, or by the Center ITSM in section 2.7.

3.2 Specific Release Requirements. In addition to the requirements associated with the categories identified in paragraphs 2.4.4.1 -- 2.4.4.2, the following specific requirements and restrictions for release of software apply to the release options defined in paragraph A.2.

3.2.1 Approved for Public Release (as defined in paragraph A.2.2)

3.2.1.1 This release category indicates there are no export, nondisclosure, or other restrictions on the software and requires concurrence by the CEA and Center Patent or IP Counsel.

3.2.1.2 Once software has been approved for Public Release, all other release types may be allowed as appropriate.

3.2.1.3 Software Approved for Public Release does not require a Technology Transfer Control Plan per section 3.5 of NPR 2190.1. Additionally, it is recognized that foreign entities may have access to Software Approved for Public Release. This is consistent with and is not prohibited by NPD 2110.1, Foreign Access to NASA Technology Transfer Materials (since further software development by the foreign recipient may be applied to NASA missions).

3.2.1.4 Under this release category, further transfer of the software by the recipient without the prior written approval of NASA may be authorized.

3.2.1.5 All releases under this category, other than via a click-wrap agreement, require an SUA be issued in accordance with paragraph A.1.18.

3.2.1.6 NASA protects and controls the use of its name, seal, insignia, and initials (see 14 CFR Part 1221). Therefore, NASA software that is categorized as Approved for Public Release shall not include the name or initials of "NASA" in the software name or acronym.

3.2.2 Approved for Open Source Release (as defined in paragraph A.2.3)

3.2.2.1 Open Source Software developed by or for NASA shall be released under the NASA Open Source Agreement (NOSA) unless external Open Source Software incorporated into the NASA Open Source Software requires use of a different open source license or unless approved by Center Patent or IP Counsel.

a. Open Source Software shall not be released using a different open source license, unless Center Patent or IP Counsel reviews the license to assess risks associated with its use and approves its use.

3.2.2.2 If a proposed release of Open Source Software includes the release of external Open Source Software, care shall be taken to ensure that the pertinent license for such external Open Source Software is acceptable. For example, at least one widely used external open source license does not currently include an indemnification provision and further requires that all software distributed with that external Open Source Software be distributed under the same license terms.

a. Therefore, except for an Approved for Interagency Release or Approved for NASA Release, both the Center Office or Project that is responsible for the software and Center Patent or IP Counsel shall review and approve any proposed distribution of Open Source Software that includes external Open Source Software.

3.2.2.3 When software categorized as Approved for Open Source Release is released as Open Source Software, the software recipient is provided with a copy of, or access to, the NOSA or other open source license and the recipient's acceptance of the NOSA or other open source license is effective upon download or use of the software. Thus, a signed SUA (e.g., a signed copy of the NOSA) is not required for this type of release.

3.2.2.4 NASA protects and controls the use of its name, seal, insignia, and initials (see 14 CFR Part 1221). Therefore, NASA software that is categorized as Approved for Open Source Release shall not include the name or initials of "NASA" in the software name or acronym.

3.2.3 Approved for U.S. and Foreign Release (as defined in paragraph A.2.4)

3.2.3.1 Due to Agency policy reflected in NPD 2110.1, this category shall be approved

only for "Software Accepted (As-Built) Baseline" that may have special considerations, such as public health and safety benefits, or where special circumstances accrue economic benefit to the U.S.

3.2.3.2 Normally, further transfer of the software by the recipient without the prior written approval of NASA is not allowed under this release category.

3.2.3.3 This release category shall be approved with great care and requires concurrence by the CEA.

3.2.3.4 All releases under this category require an SUA be issued in accordance with paragraph A.1.18.

3.2.3.5 Nondisclosure and export control provisions shall be included as directed by the Center Patent or IP Counsel and CEA, respectively.

3.2.4 Approved for U.S. Release Only (as defined in paragraph A.2.5)

3.2.4.1 Normally, further transfer of software by the recipient without the prior written approval of NASA is not allowed under this release category.

3.2.4.2 All releases under this category require an SUA be issued in accordance with paragraph A.1.18.

3.2.4.3 Nondisclosure and export control provisions shall be included as directed by the Center Patent or IP Counsel and CEA, respectively.

3.2.4.4 Release may be made by the Center directly or by the Center via a designated NASA agent for software transfer and distribution (i.e., NASA contractor, grantee, or Space Act Agreement partner). A U.S. Release via a designated agent shall be subject to this NPR. Restrictions on the use and distribution of software via a designated agent may be established by NASA.

3.2.5 Approved for U.S. Government Purpose Release. Except for (1) a civil servant-to-civil servant exchange of software within the same NASA Center, (2) a civil servant-to-civil servant exchange of a particular software within the project that has responsibility for that software, or (3) software released as Government Furnished Information (GFI) under a NASA contract or grant, an SUA is required for all subcategories under the Approved for U.S. Government Purpose Release (as defined in paragraphs A.1.2.6.1 through A.1.2.6.5). Once a release of a particular software to a NASA project other than the project that has responsibility for that software has been approved and released via an SUA, that software may be further released civil servant-to-civil servant within that project without further review under this NPR. Nondisclosure and export control provisions shall be included in SUAs as directed by the Center Patent or IP Counsel and CEA, respectively. Permission to redistribute NASA software to contractors and/or subcontractors for use under a Government contract may be included, as appropriate.

3.2.5.1 Approved for Beta Release (as defined in paragraph A.2.6.1). The Center SRA shall authorize a Beta Release only upon NASA's receipt and acceptance of nondisclosure and feedback agreements. A Beta Release is only appropriate for the purpose of obtaining test and evaluation comments and feedback on the operation of a computer program from beta release recipients.

a. A Beta Release to a foreign organization, consistent with paragraphs A.2.6.2.c and

3.2.5.2c, shall be authorized by the SRA only after consultation with and concurrence by the CEA.

3.2.5.2 Approved for Project Release (as defined in paragraph A.2.6.2). The Center SRA shall authorize a Project Release only through written contract, SUA, or other agreement. Nondisclosure and export control provisions shall be included as directed by the Center Patent or IP Counsel and CEA, respectively. At a minimum, NASA shall obtain Government purpose license rights to any software enhancements or derivative works made by the software recipient. Approved for Project Release includes the following categories of release:

a. Project Release for use under NASA contracts or grants (see paragraph A.2.6.2a). The release shall specifically limit the use of the software to the contractor and specifically identified subcontractors. Upon approval by the Center SRA, the release may be implemented by the responsible technical project monitor and may be made before the Technology Transfer Assessment is completed.

(1) If released as GFI under a contract or grant, use of the software shall be limited to accomplishing work under that contract or grant.

(2) If released under a separate SUA, use of the software shall be limited to accomplishing work under the contract(s) or grant(s) listed in the SUA.

b. Project Release in the United States for use under a Space Act Agreement, cooperative project, exchange program, or other agreement between NASA and another organization (see paragraph A.2.6.2b). The release shall be specifically limited to the use of the software by the stated recipient, solely to accomplish the work described in the agreement, or if further distribution is approved, delineated in any NASA-approved distribution of the released software.

c. Project Release for use by a foreign organization to implement an international cooperative project established by NASA in a project agreement with the foreign cooperating or sponsoring agency (see paragraph A.2.6.2c). The release shall be specifically limited to use of the software by the stated recipient and shall prohibit any further distribution.

(1) Any such release shall be in accordance with the international agreement and the NASA Export Control Program.

3.2.5.3 Approved for Developmental Release (as defined in A.2.6.3). This category is generally a type of Project Release for use under a NASA contract where Software Product Baseline is released specifically for further development on behalf of the Government but not including operational use.

3.2.5.4 Approved for Interagency Release (as defined in A.2.6.4). This type of release is for use by another U.S. Government agency and shall include any use restriction (e.g., for governmental purposes only or for internal Government use only) associated with the software. If the receiving Agency is authorized to further release the software, provisions to flow down disclaimer and indemnification provisions to the further recipients are required.

3.2.5.5 Approved for NASA Release (as defined in A.2.6.5). This type of release is between NASA Centers. The SUA for this type of a release is a simple acknowledgement of receipt of the software that identifies any restriction on NASA's right to use the software. The acknowledgement, which may be done via click-wrap

acceptance, shall include any use restriction (e.g., for governmental purposes only or for NASA internal use only) associated with the software but does not require disclaimer or indemnification provisions.

a. If the receiving Center plans on releasing it to a Center contractor, the receiving Center shall use a Project Release under paragraph 3.2.5.2a.

b. Approved for NASA Release may include a "NASA Remote Access" wherein NASA grants access to computers and associated software to those acting on behalf of NASA for Government purposes; however, approval for "NASA Remote Access" requires appropriate Center-level review to include vetting the identities of parties to whom the software would be released.

3.2.6 The Center SRA shall not authorize an Unrestricted Release (as defined in paragraph A.2.7).

3.3 Patent and Copyright Licensing

3.3.1 Patent and copyright licensing to external entities is not considered a release under this NPR. Patent and copyright licensing is implemented under NPD 2090.6. However, in general, before software is approved for licensing, it shall go through the same review and assessment process as described in Chapter 2 herein.

3.4 Disclaimer and Indemnification

3.4.1 All software released by NASA, except for an Approved for NASA Release, shall contain appropriate disclaimer and indemnification provisions stating that the software is provided "as is" without any warranty, expressed or implied and that the recipient waives any claims against, and indemnifies and holds harmless, the Government and its contractors and subcontractors.

3.4.1.1 The disclaimer and indemnification provisions shall be included in the SUA and, where practicable, shall be displayed on software startup and/or, for software delivered in tangible form, be attached as a label to the software medium released.

3.4.1.2 Use of any exceptions to the disclaimer and indemnification clauses shall be approved by the Center Office of Chief Counsel or Center Patent or IP Counsel as appropriate. With the approval of counsel, reference to indemnification may be removed when: (1) a Recipient is a state government entity (e.g., a state college/university) or U.S. Government entity prohibited by state or Federal law from agreeing to indemnify; (2) NASA software is distributed with, or as part of, external Open Source Software obtained by NASA under a license that does not include indemnification provisions and that requires all software distributed with that external Open Source Software to be distributed under the same license terms; or (3) in the case of a Project Release under a Government contract, the software is provided as Government Furnished Information (GFI) under the contract or as otherwise approved by Center Office of Chief Counsel or Center Patent or IP Counsel.

3.4.1.3 Sample disclaimer and indemnification provisions are provided as follows:

a. This software is provided "AS IS" without any warranty of any kind, either expressed, implied, or statutory, including, but not limited to, any warranty that the software will conform to specifications, any implied warranties of merchantability, fitness for a particular purpose, or freedom from infringement, any warranty that the software will be error free, or any warranty that documentation, if provided, will conform to the software.

In no event shall the U.S. Government, or its contractors or their subcontractors, be liable for any damages, including, but not limited to, direct, indirect, special or consequential damages, arising out of, resulting from, or in any way connected with this software, whether or not based upon warranty, contract, tort, or otherwise, whether or not injury was sustained by persons or property or otherwise, and whether or not loss was sustained from, or arose out of the results of, or use of, the software. The U.S. Government disclaims all warranties and liabilities regarding third party software, if present in the NASA generated software, and distributes it "AS IS."

b. Recipient agrees to waive any and all claims against the U.S. Government its contractors and their subcontractors and shall indemnify and hold harmless the U.S. Government and its contractors and their subcontractors for any liabilities, demands, damages, expenses, or losses that may arise from recipients' use of the software, including any damages from products based on, or resulting from, the use thereof.

c. If further release or distribution of this software is permitted, recipient agrees to obtain this identical waiver of claims, indemnification, and hold harmless agreement with any entities that are provided with the software.

3.5 Notices

3.5.1 Copyright and restrictive notices, as applicable, shall be included in the SUA.

3.5.1.1 Where practicable, copyright and restrictive notices shall be embedded in the software, displayed on software startup, and/or be attached as a label to the software medium released.

3.5.1.2 Copyright Notice. Software released by NASA shall normally include a copyright notice.

a. Unless a copyright notice is required pursuant to paragraph 3.5.1.2e below, the Center SRA may choose not to require the use of a copyright notice when the software is distributed to another NASA Center, another Federal Agency, or to a NASA contractor, grantee, cooperative agreement, or Space Act Agreement partner using a SUA with appropriate nondisclosure provisions.

b. For purposes of the year of first publication used in the copyright notices below, publication means the first distribution of software to an entity external to NASA as a Public Release or Open Source Release as described in paragraphs A.2.2 and A.2.3, respectively. If software has only been released under one of the more restrictive release categories that do not allow further release, it is not considered to be published and only an unpublished work copyright notice shall be used. If a particular software version includes all or parts of earlier versions that have been released at different times, the year of first publication may include multiple years or a range of years that correspond to the various releases (e.g., Copyright 2001, 2003, 2005 or © 2002-2004).

c. The SRA shall consult with the Center Patent or IP Counsel to determine if a copyright notice is required and, if so, the proper copyright notice to include in the software or SUA.

d. The following are example copyright notices.

(1) For unpublished software that is a work of the U.S. Government, i.e., software coded entirely by U.S. Government employees as part of their employment, use:

Unpublished Work Copyright [year software version completed] United States Government as represented by the Administrator of the National Aeronautics and Space Administration. No copyright is claimed in the United States under Title 17, U.S. Code. All Other Rights Reserved

(2) For published software that is a work of the U.S. Government, use:

Copyright [year of first publication] United States Government as represented by the Administrator of the National Aeronautics and Space Administration. No copyright is claimed in the United States under Title 17, U.S. Code. All Other Rights Reserved.

(3) For unpublished software created in whole or in part by a non-Federal entity and assigned to the U.S. Government, use:

Unpublished Work Copyright [year software version completed] United States Government as represented by the Administrator of the National Aeronautics and Space Administration. All Rights Reserved.

(4) For published software created in whole or in part by a non-Federal entity and assigned to the U.S. Government, use:

Copyright [year of first publication] United States Government as represented by the Administrator of the National Aeronautics and Space Administration. All Rights Reserved.

e. In the event NASA has been granted the right to release software owned by third parties (e.g., through written permission or license from the software owner), any third party copyright notices on such software shall be included in the SUA or in a readme file within the software (e.g., as is the practice in Open Source Releases).

3.5.1.3 Restrictive Notice.

a. The following general restrictive notice shall be included in the SUA for all releases except for an Approved for NASA Release:

This software may be used, reproduced, and provided to others only as permitted under the terms of the contract or other agreement under which it was acquired from the U.S. Government. Neither title to nor ownership of the software is hereby transferred. This Notice shall remain on all copies of the software.

b. Any specific use and disclosure restrictions shall also be specified in the SUA.

3.6 Software Release Records and Metrics Reporting

3.6.1 Software Release Records. The Center SRA shall establish and maintain Software Release Records as defined in A.1.17. The unrestricted release of NASA software (i.e., without an appropriate SUA or release record as defined in paragraphs A.1.18 and A.1.17, respectively) is prohibited. An unidentified release of NASA software does not provide NASA with the ability to measure the interest generated by the software or track the owner of a particular version of the software.

3.6.1.1 Software and Software Release Records shall be safeguarded, retained, and disposed of per guidance provided in NPR 1441.1.

3.6.2 If the release is solely by electronic means, an Internet Protocol Address, by itself, is insufficient for identification purposes. In an effort to track usage and maintain accurate records, each recipient shall be requested to register with a NASA point of

contact for all transfers of Public Release or Open Source software for which no Software Release Record was required (e.g., release by click wrap agreement). The Center official designated by the Center Director, or his/her designee(s), is the point of contact for the purposes of establishing this registration regarding software release at that Center.

3.6.3 The performance measures or metrics, as established by NPD 7120.4, shall be reported semiannually (due 2 weeks following the end of 2nd and 4th fiscal year quarters) by the Center SRA to the Chief Technologist at NASA Headquarters.

3.6.3.1 To the extent feasible, NTTS shall be used to record and maintain metrics data.

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